

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 10, 2009 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 11 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious Sugiyama et al. (US 7,175,613).

With reference to claim 1, Sugiyama et al. (hereinafter "Sugiyama") discloses an absorbent article (10) configured to be worn by a user, where the article has a front side corresponding to a front side of a body of the user when the article is worn by the user, and a rear side corresponding to a rear side of the body of the user when the article is worn by the user (figure 7), the article including:

a first sheet leak preventer (13) extending from the front side of the absorbent article to the rear side of the absorbent article, and having a front part disposed on the front side of the absorbent article and rear part disposed on the rear side of the absorbent article;

a second sheet leak preventer (16) disposed above an upper side of the first leak preventer and positioned over a rear part of the first leak preventer, where the second leak preventer does not substantially extend over a front part of the first leak preventer and;

an absorber (28) containing a super absorbent polymer (col. 11, lines 18 – 23) capable of absorbing a body fluid, and disposed above an upper side of the first preventer extending from the front part of the first leak preventer beneath the second leak preventer in at least one layer wherein the second leak preventer is closer to a skin of the user than the first leak preventer when the article is worn by the user as set forth in figure 8.

While Sugiyama does include an opening in the second leak preventer, the examiner contends that all feces will not necessary permeate or pass through the second leak preventer. The limitation stating that feces will not permeate or pass through the second leak preventer is considered relative. The passage of or permeation by feces depends on the size of the excretion as well as the consistency and position when excreted. In light of such, it can be said that feces may not be allowed to pass through or permeate the second leak preventer.

With reference to claim 2, Sugiyama discloses an absorbent article in which a urine introduction part forming member (44) is bonded to a part of a lower surface of a front end of the second leak preventer as set forth in figure 2a.

As to claim 3, Sugiyama discloses an absorbent article further including a urine/feces stopping member (44) in a front end or in a vicinity of the front end of the second leak preventer as set forth in figure 2a.

With reference to claim 4, Sugiyama discloses an absorbent article in which the absorber is separated (area 29) and provided on right and left sides in a front part of the first leak preventer as set forth in figure 7.

With respect to claim 5, Sugiyama discloses an absorbent article in which the absorber is separated (area 17) and provided on right and left sides in a rear part of the first leak preventer as set forth in figure 7.

As to claims 6 and 7, Sugiyama discloses an absorbent article in which a part or entire periphery of the first leak preventer rises upward and/or in which the right and left side walls of the first leak preventer are folded inward as set forth in figures 7 – 8.

As to claim 8, Sugiyama discloses an absorbent article which right and left side walls of the first leak preventer are formed into folded shape as set forth in figure 7.

Regarding claim 9, Sugiyama discloses an absorbent article in which the absorber is provided in each of at least two of two or more stepped-spaces defined by the right and left side walls of the first leak preventer formed into folded shape as set forth in figure 8.

With respect to claim 10, Sugiyama discloses an absorbent article in which a part or entire periphery of the second leak preventer rises upward as set forth in figure 7.

As to claim 11, see the rejection of claim 1 and figure 7. The article of Sugiyama is fully capable of performing the recited function.

Response to Arguments

Applicant's arguments filed February 10, 2009 have been fully considered but they are not persuasive.

With respect to the applicant's argument that Sugiyama allows feces to pass through the top sheet, the examiner contends that all feces will not necessarily permeate or pass through the second leak preventer. The limitation stating that feces will not permeate or pass through the second leak preventer is considered relative. The passage of or permeation by feces depends on the size of the excretion as well as the consistency and position when excreted. In light of such, it can be said that feces may not be allowed to pass through or permeate the second leak preventer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/
Primary Examiner, Art Unit 3761